

Introduced by Senator WylandFebruary 20, 2014

An act to amend Section 368 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1233, as introduced, Wyland. Theft: elder and dependent adults.

Existing law makes it a crime, punishable either as a misdemeanor or a felony, to violate any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft when the victim is an elder or dependent adult and the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950. If punished as a misdemeanor, existing law authorizes imprisonment or a fine not to exceed \$2,500, or both the fine and imprisonment. If punished as a felony, existing law authorizes imprisonment or a fine not to exceed \$10,000, or both the fine and imprisonment.

This bill would make the maximum amount of the fine for this crime \$25,000, if punished as a misdemeanor, and \$100,000, if punished as a felony.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 368 of the Penal Code is amended to
- 2 read:
- 3 368. (a) The Legislature finds and declares that crimes against
- 4 elders and dependent adults are deserving of special consideration
- 5 and protection, not unlike the special protections provided for
- 6 minor children, because elders and dependent adults may be

1 confused, on various medications, mentally or physically impaired,
2 or incompetent, and therefore less able to protect themselves, to
3 understand or report criminal conduct, or to testify in court
4 proceedings on their own behalf.

5 (b) (1) ~~Any~~ A person who knows or reasonably should know
6 that a person is an elder or dependent adult and who, under
7 circumstances or conditions likely to produce great bodily harm
8 or death, willfully causes or permits ~~any~~ an elder or dependent
9 adult to suffer, or inflicts thereon unjustifiable physical pain or
10 mental suffering, or having the care or custody of ~~any~~ an elder or
11 dependent adult, willfully causes or permits the person or health
12 of the elder or dependent adult to be injured, or willfully causes
13 or permits the elder or dependent adult to be placed in a situation
14 in which his or her person or health is endangered, is punishable
15 by imprisonment in a county jail not exceeding one year, or by a
16 fine not to exceed six thousand dollars (\$6,000), or by both that
17 fine and imprisonment, or by imprisonment in the state prison for
18 two, three, or four years.

19 (2) If, in the commission of an offense described in paragraph
20 (1), the victim suffers great bodily injury, as defined in Section
21 12022.7, the defendant shall receive an additional term in the state
22 prison as follows:

23 (A) Three years if the victim is under 70 years of age.

24 (B) Five years if the victim is 70 years of age or older.

25 (3) If, in the commission of an offense described in paragraph
26 (1), the defendant proximately causes the death of the victim, the
27 defendant shall receive an additional term in the state prison as
28 follows:

29 (A) Five years if the victim is under 70 years of age.

30 (B) Seven years if the victim is 70 years of age or older.

31 (c) ~~Any~~ A person who knows or reasonably should know that
32 a person is an elder or dependent adult and who, under
33 circumstances or conditions other than those likely to produce
34 great bodily harm or death, willfully causes or permits any elder
35 or dependent adult to suffer, or inflicts thereon unjustifiable
36 physical pain or mental suffering, or having the care or custody
37 of ~~any~~ an elder or dependent adult, willfully causes or permits the
38 person or health of the elder or dependent adult to be injured or
39 willfully causes or permits the elder or dependent adult to be placed
40 in a situation in which his or her person or health may be

endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) ~~Any~~ A person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:

(1) By a fine not exceeding ~~two thousand five hundred dollars (\$2,500)~~ *twenty-five thousand dollars (\$25,000)*, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ~~ten thousand dollars (\$10,000)~~ *one hundred thousand dollars (\$100,000)*, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).

(2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

(e) ~~Any~~ A caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:

(1) By a fine not exceeding ~~two thousand five hundred dollars (\$2,500)~~ *twenty-five thousand dollars (\$25,000)*, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ~~ten thousand dollars (\$10,000)~~ *one hundred thousand dollars (\$100,000)*, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property

1 taken or obtained is of a value exceeding nine hundred fifty dollars
2 (\$950).

3 (2) By a fine not exceeding one thousand dollars (\$1,000), by
4 imprisonment in a county jail not exceeding one year, or by both
5 that fine and imprisonment, when the moneys, labor, goods,
6 services, or real or personal property taken or obtained is of a value
7 not exceeding nine hundred fifty dollars (\$950).

8 (f) ~~Any~~ A person who commits the false imprisonment of an
9 elder or a dependent adult by the use of violence, menace, fraud,
10 or deceit is punishable by imprisonment pursuant to subdivision
11 (h) of Section 1170 for two, three, or four years.

12 (g) As used in this section, “elder” means ~~any~~ a person who is
13 65 years of age or older.

14 (h) As used in this section, “dependent adult” means ~~any~~ a
15 person who is between ~~the ages of~~ 18 and 64 *years of age*,
16 *inclusive*, who has physical or mental limitations ~~which~~ *that* restrict
17 his or her ability to carry out normal activities or to protect his or
18 her rights, including, but not limited to, persons who have physical
19 or developmental disabilities or whose physical or mental abilities
20 have diminished because of age. “Dependent adult” includes ~~any~~
21 a person between ~~the ages of~~ 18 and 64 *years of age, inclusive*,
22 who is admitted as an inpatient to a 24-hour health facility, as
23 defined in Sections 1250, 1250.2, and 1250.3 of the Health and
24 Safety Code.

25 (i) As used in this section, “caretaker” means ~~any~~ a person who
26 has the care, custody, or control of, or who stands in a position of
27 trust with, an elder or a dependent adult.

28 (j) Nothing in this section shall preclude prosecution under both
29 this section and Section 187 or 12022.7 or any other ~~provision of~~
30 law. However, a person shall not receive an additional term of
31 imprisonment under both paragraphs (2) and (3) of subdivision
32 (b) for ~~any~~ a single offense, nor shall a person receive an additional
33 term of imprisonment under both Section 12022.7 and paragraph
34 (2) or (3) of subdivision (b) for ~~any~~ a single offense.

35 (k) In any case in which a person is convicted of violating these
36 provisions, the court may require him or her to receive appropriate
37 counseling as a condition of probation. ~~Any~~ A defendant ordered
38 to be placed in a counseling program shall be responsible for
39 paying the expense of his or her participation in the counseling
40 program as determined by the court. The court shall take into

- 1 consideration the ability of the defendant to pay, and no defendant
- 2 shall be denied probation because of his or her inability to pay.

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